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245. k. 16
A.D. 1701
F
ESSAY

ON A

Registry,

FOR

Titles of Lands.

By JOHN ASGILL,

of Lincolns-Inn, Esq;

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The Second Edition.

L O N D O N,

Printed in the Year, 1701.

1225

9 H 3 Ch. 36. No Land shall be given
in Mortmain.

1279

7 E 1 Who shall take for the forfeiture
of Land given in Mortmain - called

1285

Statutum de Religiosis.
West 2 - 13 Ed. 1 Ch. 32 Mortmain
by recovery of Land by Default.

1391

15 R 2 Ch 5. A parson of Lands to
remain plac'd persons & others
shall be adjudged Mortmain.

1536

27 H 8 Ch 10 An Act concerning
Uses & Wills - called the Stat
for transferring of Uses & Trusts
into possession.
Ch 16. For inclosure of
Bargains & Sales - (in 6 Mo.)

For inclosure Writing indented
where the Lands exceed 1000 10 2:0
Yearly value of 400
where it exceeds 400 10 5:0



Printed in the Year 1701

The Preface.

My Name stands already Printed to a late Essay, Entituled, Several Assertions proved, in order to Create another Species of Money than Gold and Silver, of which I am not ashamed; and I have added my Name to this, that (whatever Usage it meets with) I may stand bound to recognize it.

I hope I have such a Warrant to search for Truth, that will justify me in breaking through all Crafts and Sciences to find it; as Hunger justified David and his Men, for entering the Priest's House, and eating the Shew-bread.

And because I find that I shall scarce be able to begin, much less to get through my Argument, without unfolding some Mysteries of Iniquity between Priests and Lawyers, relating to the Titles and Settlements of Lands, I hope, that the Modern Pro-

The Preface.

fessors of either of these Sciences will not be offended with me for speaking the whole Truth; but if they should, They will thereby be Witnesses against themselves, that they justify the Deeds of their Fathers.

And if I should be charg'd with Prophaneness, for mingling Sacred Things with Secular; I will shelter my self under the Lord of the Sabbath, who was accused for doing Business on that Day; and

**Haud timeo si jam nequeam defendere Crimen,
Cum tanto Commune**

SEVERAL

SEVERAL
ASSERTIONS
 PROVED,
 In Order to Introduce a BILL,
 FOR
Establisling a **REGISTRY.**
 FOR
Titles of Lands.

First Assertion.

*That as the Law now stands, the Free-
 hold Lands in England may be in-
 cumbered in diverse Manners, and at
 diverse Places.*

PROVED.

Free-hold Lands may be incumbered
 these several Ways :

1. By Feofment, which must be exe-
 cuted in the Place where the Lands lye.
2. By

2. By Grant with Attornment, of which the Tenants must have Notice.

3. By Fine and Recovery (with a Deed leading the Use) which are Matters of Record.

4. By Bargain and Sale, Inrolled in either of the Four Courts at *Westminster*, or with the *Custos Rotulorum* of the County where the Lands lye,

5. By Judgments in Three Courts at *Westminster*.

6. By Recognizances entered in the Courts where they are acknowledged.

7. By Statutes Merchant and Staple transmitted into *Chancery*.

8. By Lease and Release, which may be Executed any where.

9. By Leases granted out of the Lands, which may be Executed any where.

10. By Rent-charges granted out of the same, which may be Executed any where.

11. By Will in Writing.

12. By Bonds to the King, which are in the Nature of Statutes-staple.

All these are Incumbrances made by the Act of the Party. Besides which there are others that happen by Default, as Acts of Bankruptcy, Eschaets, and Attainders.

Now

Now I am not a going to Calumniate the Law, for allowing of so many sorts of Incumbrances on Lands, but for permitting them to be done in diverse Places; *Which doth render the Titles to Lands uncertain, and therefore is a Deficiency in the Law:* And tho' the Law hath directed several of them to be recorded, yet this doth not remedy the Incertainty.

First, Because these Records do lye in several Places, which makes the Search thereof chargeable, and the Finding difficult.

Secondly, Because those that are upon Record, have no Preference above those that be not; so that should a Purchaser discover all that are Recorded, he may be defeated by those that are not; which can never be discovered, but by the Confession of them that made them, because they may be executed any where.

Therefore the Drift of this Essay, is to give a Sanction to one Place above all the rest, by annexing a Priviledge to it, and leaving it to every Man's Pleasure whether he will purchase that Priviledge or not.

To shew the Necessities and Conveniencies whereof, I offer the following Arguments.

Second

Second Assertion.

1536. That the Advantage taken (by the Conveyances in the Law) of the Statute of Uses, 27. H. 8. in making Clandestine Conveyances, contrary to the true intent and meaning of the Parliament, and all the avowed Law and Customs of England, doth occasion a Necessity of a Registry to prevent them.

PROVED.

In tracing out the Occasions of making this Statute, I was drawn through all the Statutes against Mortmain, as far back as *Magna Charta*, which doth prohibit the giving Lands to Religious Houses, by which it did seem to me, that Lands had been so giving before that time, or else had not been Prohibited: For human Prohibitions generally come after the Fact committed, whereas the Laws divine prohibit by way of Prevention; *Adam* was forbidden the Tree, before ever he had tasted of it.

The first Statute against Mortmain, was made by God himself, before the Fact committed

mitted ; for by the *Mosaical Law*, (which instituted the first Society of Priesthood,) the *Levites* are forbidden to have any Inheritance but the Tithes, that they might not dote upon their Possessions ; but Avarice increasing upon them by an Acquisition of Wealth, which they did not know how to dispose of, they agreed to set up a Publick Treasury, by way of a Joint-stock, for the use of the Church, which was not within the Words of the Prohibition ; and out of this Joint Stock they paid *Judas the Thirty pieces of Silver*, which being returned by him, they were loth to part with it, and yet puzzled what to do with it, because being the Price of Blood, it was against their own Canons, to put it again into their Treasury ; *Therefore Math. they took Counsel, and bought the Potters Field, 27. 7. to bury Strangers in.* As my Lord Coke commends the Wisdom of our Ancient Clergy, for always choosing the most Learned in the Law to be of their Counsel, so it seems these Priests of old were endu'd with the like Wisdom : *For the Children of this World are wiser in their Generation, than the Children of the Light.*

Now these Lawyers advis'd their Clients, that notwithstanding this Canon, they might purchase Lands with this Money, and annex them to their Church : But this being against

the Law Divine, prohibiting their purchasing of Lands, the Lawyers found this Stragem, To purchase these Lands for a Burying-place only, in the Nature of a Church-yard which being a thing of Necessity, and made Sacred, would exempt, or at least excuse it from this Statute against Mortmain, and the Priests computing that this might turn to as much Profit as any thing else (having double Duties for Lodging of Men, and Meat for Horses) they consented to lay out their Money in it. (Any thing to get a Penny in an honest way.)

And this Field of Blood was the first Spot of Glebe in the World, to which the Priests will be intituled (in right of the Church) if ever they gain the possession of the Holy Land.

But having laid this Nest Egg, they went on to join Field to Field, and had they been let alone, had converted whole Kingdoms into Holy Ground before now.

And why Houses of Religion are said to be more haunted with Ghost than Lay-Tenements, I can't tell, unless some of their subsequent Augmentations were the Price of Blood, as well as their Original Purchase.

But now to begin at our Laws : It is strange to observe, how the Parliaments of England did hunt the Priests and Lawyers with Statutes

tutes against Mortmain, from the making of
Magna Charta, 9. H. 3. ^{Ch. 36} to this Statute in 1225.
 27. H. 8. and yet could never catch them.

The Statute of *Magna Charta* (as has been
 observed) prohibited the giving of Lands to any
 Religious House: To evade this, the Lawyers
 advised the Clergy two Things: *First*, That
 whereas several great Estates were held of
 them, under small Rents, that they might
 purchase in these Estates to their Church;
 because they were before held of them.
Secondly, The Prohibition of the Statute be-
 ing to *Religious Persons only*, that the *Secu-
 lar Clergy* were exempted.

To hunt them out of these Holds, the Sta-
 tute of 7 E. 1. called *Statutum de Religiosis*,
 doth prohibit any *Religious Persons, or others*
 (which includes the Secular Clergy) by any
 manner of *Craft or Engine to take Lands in
 Mortmain*, and so they could not purchase
 in the Estates held of them.

To evade this Statute, the Lawyers advi-
 sed the Clergy, That if they had any silly
 Confessants who had a mind to be cheated
 of their Estates, they might suffer a feigned
 Action to be brought against them, and there-
 by lose their Lands by default, which Reco-
 veries were adjudged by the Justices not to
 be within any of the Words of this Statute,

and therefore they were allowed ; For that Recoveries being prosecuted in course of Law, were by Law presumed to be just and lawful, tho' they were done in Fraudem Legis.!

1285 To drive them out of this Hold, the Statute of Westminster ^{Ch. 32} 2. makes all Lands so recovered to be forfeited to the Lords of the Fee, and for want of their Entry to the King.

To evade this Statute, the Lawyers advised the Clergy two Things : First, That for all Lands lying round the Church, they might enter into them by assent of the Tenants, and make them Church-yard by Bulls of the Pope (whether they had this by precedent from the Original Purchase, or according to the Proverb, *That good Wits jump*, is not material.) Secondly, They advised them that they might purchase Lands in the Names of other Persons to their Use.

1391. To hunt them out of these Holds, the Statute of 15 R. 2. prohibits both these.

Stat. Convent.
322. To evade this, the Lawyers advised the Clergy, that they might purchase in the Names of other Persons *in Trust* for themselves ; which Trust was not within the precise Words of Use.

And thus the Priests continued to Cheat the People of their Estates, and the Lawyers the King of his Eschaets, for above three hundred

hundred years together, in spite of all Laws made to the contrary.

In which time they had taught the Laiety this Craft, to convey away their Legal Estates to Persons in Trust, whereby to prevent the Descent to the Heir, and consequently the Wardship to the King and other Lords, and yet to keep the Use and Pernancy of the Profits to themselves and Families: Of which King H. 8. complaining to his Judges, they advised an Act for Transferring all Uses and Trusts into Possessions, for which purpose a Bill was drawn by the King's Counsel, and presented to the House of Commons in the 24th. Year of his Reign, when it was rejected, but passed in the 27th. which is this Statute of Uses.

Hen 8th

1536

And four years after a Statute passed (worth all the former) for Dissolution of Monasteries; by which the Priests lost their Lands, and the Lawyers their Clients (tho' not their Cunning) as will appear by the Sequel.

Now this Statute of Uses 27 H. 8. hath introduced a new Conveyance in the Law, (which was not before) by way of Bargain and Sale, for tho' a Bargain and Sale did raise a use at the Common Law, yet it was not a compleat Conveyance to transfer the Possession.

Bargain and Sale

2 mod. 212

Will: Conveyancer 320.

sion without an Actual Delivery of it in the Country, but now this Statute doing that Office by transferring the Use into a Possession, a Bargain and Sale became a complete Conveyance without any other Ceremony, and the same Parliament foreseeing that this Bargain and Sale so perfected, might become a Clandestine Conveyance to be executed any where, did intend to provide against it by making a short Statute the same Sessions for that purpose, called *The Statute for Enrollments*, by which all Conveyances of Inheritance of Freehold, which pass by Bargain and Sale only, are to be Enroll'd within six Months after the Date, that Purchasers may have Notice thereof from the Record.

But of late years the Lawyers have topt their Inventions upon these two Statutes. For, *First*, They make a *Bargain and Sale* for a Term only (now generally called a *Lease for a Year*) and which is not within the Statute of Enrollments, and by this the Lessee gains a Use at *Common-Law*, and a Possession by the *Statute of Uses*; which makes him capable of taking a Release of the Reversion at *Common-Law*, and then they make a *Release* to him and his Heirs accordingly. Which two Deeds make him one perfect Conveyance, and so by putting the *Common-Law*

Law at both Ends, and the Statute of Uses in the Middle, the Statute for Enrollments is bilkt, and these Conveyances by *Lease and Release* (which are Clandestine Conveyances, and invented by the Abuse of one Statute, and the Illusion of the other) are become the Common Conveyances of the Kingdom. *2 Mod Rep. 252. of Wills of Incest. 10*

I challenge the Inns of Court to shew that either the *Common Law* or any Parliaments of *England*, ever directed any Incumbrances to affect Lands, but by Solemn Livery and Seisin, or Matter of Record; and therefore these Clandestine Conveyances are crept in, contrary to the Intent and Meanings of Parliaments, and all the avowed Laws and Customs of the Kingdom.

There are two Common Titles to Lands in *England*: The one by Descent, which is proved by Marriages, Baptisms and Burials; and the other by Purchase, which is proved by Deeds; and where there is one Dispute of Title by Descent, there are ten by Purchase; because the Titles which shew the Descent are registred, and those by Purchase are not; for were these Marriages, Baptisms and Burials, left at large without notifying of them as Purchases are, it would soon breed Confusion in all the Descents of the Kingdom. And is it not a Reproach to the

the Law, that that part of the Titles of Land which is the Province of poor Parish Clerks should have more certainty in it, than that which belongs to the Professors of the Law.

Third Assertion.

That all Objections made against a Registry, upon account of Mischiefs which may arise by Discovery of Titles, are not only contrary to all the avowed Laws and Customs of England, but to the very Essence of the Title, and the History of Conveyances.

PROVED.

Some Notice is essentially necessary to the Title of every thing that is vendible: *to make a Title, is to take the Property of a thing from one Man, and put it into another; which it is necessary that other persons should have Notice as well as the Parties themselves; else the Purchaser can have no Title because there is no Witness to give Evidence of it in case the Seller should deny it. And as for Notice is absolutely necessary to all Titles, the more Notice is, the better is the Title; it were better for every Man who is Owner of an Estate, that all Men knew his Title.*

and then whenever he had Occasion to dispose of his Estate, there would be no further Enquiry into the Title of his Lands, then to the Title of Money in his Possession.

And as Notice is thus necessary and advantageous to Title, so in the History of Conveyancing, the most perfect Title are most Notorious, or rather the most Notorious are most perfect.

And because Antiquity of Precedents is the greatest Argument in the Law: I'll quote one out of that Authority, which treats of Things done before the Foundations of the World, and foretells us of several things that will come to pass after the Dissolution of it. The History of the World is but a Modern Treatise of things of a late Date, which were done in pursuance of Counsels and Decrees made before: *Matters of Fact* set forth, without the Original Design and Institution of them seem irrational, and to have no Meanings in them: Would any thing seem more ridiculous, than that the taking off a Seal and delivery of a piece of Parchment by one Man should give another a Title to an Estate, if the Law were not known which gives the Sanction to this Ceremony?

Ow The Precedent I am going to quote is,
That great Settlement of Eternal Life, made

by God upon *Jefus Christ*, for the Consideration therein mentioned : The Epitome or Content whereof, and the Manner of the Execution I find in that History which we call the Gospel ; but because the Contents thereof is not a Subject within this Essay, I will not dare to touch upon it here : But the manner of the Execution being directly within my Argument, (or rather my Argument with that) I dare relate it as I find it. This Settlement was first Enrolled in Heaven (*in the Volume of the Book it is written of me*) afterwards was Sealed and Executed in the Blood of Christ (*the Seal of the Covenant*) in the presence of all the World (*the Sound thereof is gone through the whole Earth*) and since that hath or shall be Written and Preached Printed and Published in all Nations, Kingdoms, Tongues and Countries. (*This Gospel must first be preached in all the World as Witness to all Nations, and then shall the End be.*) By all which God himself is bound up from disposing Eternal Life in any other manner than pursuant to this Settlement without giving himself the Lye, which he cannot do ; and Man hath such Notice of this Title, that he can't accept any other without becoming an Impostor upon himself. And this is the highest Precedent for Man

to form his Titles by, as far as it is imitable
 by him ; *The things on Earth are but the Pat-
 terns of things in the Heavens, where the Ori-
 ginals are kept, to try the Truth of all things by.*
 God delivered out the first Forms of all
 things in the World, of Ships, of Regular
 Buildings, of Letters written with his own
 Hand, of Marches and Encampments, taught
 the first Workers in Brass and Bugle-work,
 Linnen and Silks, Plowing and Harrowing,
 Sowing and Reaping, Threshing and Win-
 nowing ; all which he owns to come Orig-
 inally from himself. *A Jove Principium.*

And now to begin with the Business of
 Man : The first Purchase I find since the Be-
 ginning of the World was made by *Abraham*
 of *Ephron the Hittite* in these Words. *And*
the field of Ephron which was in Machpelah, which
was before Mamre, the field and the cave which
was therein, and all the Trees that were in the
field, that were in all the Borders round about,
were made sure to Abraham for a Possession in the
presence of the Children of Heth, before all
that went in at the Gate of the City.

Another was made by *Boaz* of *Naomi* in
 these Words, *And Boaz said unto the Elders and*
unto all the People, ye are Witnesses this day, that
I have bought all that was Elimelechs, and all that
was Chilions and Mahlons of the hand of Naomi :

over Ruth the Moabiteſs, the Wife of Mahlon have I purchaſed to be my Wife, ye are witneſſes this day. And all the People that were in the Gate and the Elders ſaid, we are witneſſes. (*Tempora ! O Mores !*) Purchaſes and Marriages made without Lawyers and Priests. However I have mention'd theſe Conveyances more particularly, becauſe I fancy our Modern Conveyancers with all their Trumpery of Stationary Ware, can't make better either for Form or Subſtance. And theſe were made by Paroll, being before the Delivery of the Form of Letters to Man.

The firſt that I have obſerved in Writing was the Purchase of Redemption made by Jeremy of Hananael, in theſe Words, *And ſubſcribed the Evidence and ſealed it, and weighed him the Money in the Ballances, ſo I took the Evidence of the Purchase, both that which was ſealed according to the Law and Cuſtom, and that which was open, and gave them to Baruch in the ſight of Hananael, and in the preſence of the Witneſſes, who ſubſcribed the Book of the Purchase before all the Jews that ſate in the Court of the Priſon ; and charged Baruch, ſaying, take the Evidence, as well that which is ſealed as that which is open, and put them in an Earthen Veſſel, that they may continue many days.*

By this it doth appear, that Reſtring of Deeds

Deeds is as ancient as the Deeds themselves : Here is the Original Sealed, and then Registered in a Book, to which the Witnesses subscribe their Names. Now *Baruch* had the Custody of the Registry, in the Nature of a Publick Notary for that purpose, being elsewhere called *Baruch the Scribe*: But that the Original was delivered him, was an Extraordinary thing, for that belongs to the Purchaser; But it being just before the carrying away Captive into *Babylon*, (of which *Jeremiah* had Notice) he delivered them both to *Baruch*, to hide them till the return of the Captivity.

That which I Cite these Precedents for, is the Notority of them, by calling all the People together to bear Witness, and an Inrollment beside to that which was in Writing.

And methinks all the Old Forms in the beginning of Deeds, shew the intention of making them as publick as they could be; *Know all men by these Presents*; and, *To all People to whom these Presents shall come, &c.*

And as the Law intends Notice of all things done by Deed, so it hath provided Publications for things done without Deed, as Fairs and Markets for Selling of Cattel, that the Purchasers may not be cheated;

Pub-

Publications in the Churches before Matrimony, and Registring after it, to prevent *Bigamy*, So the Law marks Felons in the Hand that none may trust them.

And yet after all this, there is a provision intended in the Bill for this Registry, whereby any one may Conceal the Uses declared of his Estate, yet so that there shall be some Notice taken of the Deed by which the Uses are declared, that the Owner of the Land shall be incapable of Selling or Mortgaging his Estate, 'till he doth produce that Deed whereby a Purchaser or Lender cannot be defeated.

Fourth Assertion.

That all Objections made against this Registry, upon Account of Reducing the Practice of the Law, are one good Reason for it.

PROVED.

The practice of the Law in Civil causes is divided into three Sorts: First, The transferring of Titles, which is called Conveyancing. Secondly, The shewing forth and defending these Titles in Forms of Law, and this is called Pleading. Thirdly, The arguing upon these Conveyances and Pleading (when

(when they come in contest) before the Judges, and this is called Practice at the Bar. So that the Practice of the two latter doth arise from the Errors or Incertainties of the former. Where the Titles of Lands once made certain (which they may be by a Registry and no otherwise) I know what I think of the future Gains of the Law: The profit of the Law arises from the Incertainty of property, and therefore as property is more reduced to a certainty, the profit of the Law must be reduced with it, the Fall of the one must be the Rising of the other. Actions of Slander and Battery, and Causes on the Crown-side, would scarce find some of the Circuiteers Perriwigs, and yet (if we observe Evidence) they stand Obligated to Dispute in Titles for many of these. Thief and Whore, Kick and Cuff, are very often the Effect of forcible Entryes, Trespasses and serving of process, in which the Title comes frequently in Question. But the reducing this part of the practice of the Law, are things not seen as yet. The *Proximus ardet* will fall upon the Conveyancers, and that not by altering the Forms of legal Conveyances, or taking them out of their Hands, or putting any stop to the Dealing in Lands, (for that will be increased) but by exposing their manner of practice in this

this conveyancing part of the Law.

For as it was numbered among the sins of one of the Kings of *Israel*, that he made Preists of the meanest of the people, so it is the Misfortune of the people of *England*, that conveyancers are frequently made out of *Old Attornies* or *Noblemens-Lease-makers* sumpt up in *Bar-gowns*. Two Qualifications are necessary to a compleat Conveyancer. First, *That he be incapable of dispatching Busines so fast as he should.* Secondly, *That he doth not dispatch it so fast as he can.* Not to speak of bantering their Clients with their seeming care and Caution in delaying their Businels, shewing great Trunks of old Writing in their Chamber, calling to their Clarks (before them) for one Lord's Set-tements and another Ladyes Jointure, to tell what great Clients they have; and when they come to be paid, they reckon their Fees by longitude and latitude. I have seen an original Mortgage of one Skin, bred up by a Scrivener (in six Year) to one and twenty, by assigning it every Year, and adding one Skin to every assignment by Recitals and Covenants, As Cows after three Years old, have one wrinkle added to each Horn for every year after, which shows their Age: And I am informed that one

Dee

Deed of sixty Skins was heaved out of a Conveyancery Office the other Day.

At this rate in a little time the Clyants must drive their Deeds out of the Lawyers Chambers in Wheel-barrows. These Assignments and Re-assignments of Securities, have been a pretty sort of Perquisites, especially if they have but an old Judgment or Statute kept on foot, these are certain annual Incomes, I knew two Serjeants at Law (Usurers) made It their common practice every Long Vacation to swop Securities with one another, to make their Mortgagers pay for the Assignment; and (doing this without Advice of Council) they once Merged an old Term, and thereby spoiled their Title to secure their Fees; which (as to them) answers the Character given of these Graduates by a Forreign Historian, *Est in Regno Anglia genus hominum doctorum indoctissimum communiter vocat, The Learned Serjants at Law*: Now I can't think but these Conveyancers and Assigners would be ashamed to produce such things to a Registry; and that therefore they must either abbreviate their Conveyances, or loose their Practice.

But whether this Registry will make these Reductions: 1. Of the Length of Conveyances.

D

ances.

ances. 2. The Incertainties of Titles: And
 3. By Consequence, the other Practice in
 the Law, I cannot tell: However I hope it,
 and believe some of them fear it.

But if the Cryes of Monks and Fryers had
 been regarded, we had never heard of the
 Desolution of Monastries; and if the Clam-
 ours of Masters of Request, Clerks, and Es-
 cheators had prevailed, the Court of Wards
 and Liveries had been standing at this day
 And yet perhaps most of these had either
 purchased their Places, or were bred up
 to that part of the Law only.

Fifth Assertion.

*That the Assurance of the Title, and Dis-
 patch of Business by this Registry,
 will be more than equivalent to all
 the Charge in Registering the Incum-
 brances.*

PROVED.

The Certainty of Titles being the main
 drift of this Essay, it would be too mean an
 Argument to use for it, to say, That the
 Charge of Registering of Deeds will be saved
 by reducing the Charges in making them
 (altho

(altho' this be true) yet granting it should not, and that this Registry should be an additional Charge to all others, yet the Priviledge of it will be worth the Price.

It is said, that whenever the *Ld. Ch. J. Hales* had made a Purchase, he would say, *Now I would give a Years purchase more to be sure of my Title* : And if we should ask those who have lost their Estates for want of a discovery of Deeds, they would set a higher Price upon it.

Men generally make their Purchases (with the acquisitions of all their former Life) to settle them on their Posterity for whom they are more solicitous than for themselves ; and therefore they are always more jealous of the Title than the Value, because a deficiency in Title goes to the whole, but a deficiency in Value goes but to part only ; and for that Reason they would almost think nothing too much to assure them of their Title.

If a Man one hundred and fifty Miles from *London*, is to sue his Neighbour but for 10 *l.* he must employ an Attorney in the Country, who must send to another in *London* to make out a Writ, and this must be Entered in one Office and Sealed in another, and then sent to the Sheriff, who must make out a Warrant, and deliver it to his Under-Officers,

who must arrest the Defendant, take a Bail bond to the Sheriff, and after Bail given to the Action, the Plaintiff must declare, to which the Defendant may plead almost what he pleases for Delay; and if he pleads to Issue (which is the fairest can be expected) there must be Issue joined, a Record sealed and sent down to the Assizes, a *Ven.* and *Disstringas* to return to the Jury, Notice of Tryal to the Defendant, a Tryal had, the Verdict returned upon the *Postea*, Judgment entered, Execution sued out and delivered to the Sheriff, and a Warrant from him to his Under-Officer to levy it.

Now I don't caluminate this Process for Recovery of Debts, nor did I ever hear the Lawyers complain of this as a Burthen to the People. But why of all troubles the trouble of a Registry should be only grievous, I can't tell, unless because it puts an End to Strife: Is it such a mighty trouble for an Attorney's Clerk when he is to enter upon a Judgment, to step into the Registry and leave an Entry made of it? and is it such a great trouble for a Man when he has sealed a Deed, to go to the Register to acknowledge it?

There's more trouble than all this in transferring Copy hold Estates, and yet we don't

don't hear much Complaint about them :
Men are seldom in such haste about laying
out their Money, or at least their Law-
yers are not so violent in Dispatch of their
Business, but they may dispense with the
Ceremony of a Registry, to prevent the
loss of their Estates.

Festina Lente is the Conveyancers Motto,
and therefore they advise their Clients
not to hurry them, nor put them out of
their own pace ; they must think nothing
troublesome but the Entering the Deed
in a Registry. To come to a Lawyers
Chamber twice a Week, to know when
they shall come again ; then to have a
Bill of Directions to send for some Deed
which the Lawyer wants, and which per-
haps is a Hundred Miles distant, in they
know not whose Hands, to employ an
Attorney to search for Judgments, Sta-
tutes, Recognizances, Deeds Inrolled in
four Courts, to send for a Copy of a Will
proved in a remote Diocess, and bring an
Account of all this to the Lawyer, and
give him a New Fee, and then begin
again ; and may be two or three such
Recipes before the Title be finished ; and the
Clients must not think much of all this, but
take it as the Nature of Business.

And

And yet I can't say but all this may be Necessary, as the Case now stands, which must still grow worse, if let alone: For the Troubles and Hazards of Titles must continually increase, until they are reduced to a greater Certainty by a Registry.

But then as a Registry would reduce the Incertainty of Titles, it must thereby take away the Delays in Conveyancing, and consequently abridge the Charges: For as the *Pharises* made long Prayers, as a pretence or equivalent for devouring Widdow's Houses: So Practicers in the Law must make out long Bills, on pretence for demanding large Fees: Like some Tooth-drawers, who drag their Patients by the Jaws about the Room, to shew them how hardly they earn their Money. To cure a Deficiency in Titles, would be as fatal to Conveyancers, as the Cure of a lame Leg to a Beggar.

It is pleasant enough to any one (but those who are to pay for it) to read a Conveyancers Bill of Fees, made out for Clients who don't pay well by the great.

To Counsel for perusing several long Deeds of the Title, which from the beginning to the end was near six Months, and drawing several long Conveyances, in all thirty Skins of Parchment, 100 Guineas.

To his Clerk for Engrossing the same, and Expedition 30 Pounds.

So here the Counsel is paid for delay, and the Clerk for Expedition, which puts me in Mind of three *Items* set down in a Country-Scriveners-Bill, *Pro speciali labore*, 6 s. 8 d. *Pro expeditione*, 6 s. 8 d. *Pro dispatch*, 6 s. 8 d. The first was for keeping the Business a great while, and the other two for doing it presently.

Sixth Assertion.

That in case this Registry be admitted, it seems more practicable and less troublesome, to settle it in the Metropolis, then to dispose it into the several Counties.

Tho' the Soil of Lands lyes in several Counties, yet Concourse of Business to the Metropolis, doth generally occasion the transferring of Titles there (especially of all that are considerable) scarce a Purchase or Mortgage of 500 *l.* but is transacted in London; and by Posts and other Correspondencies, it is less trouble to transmit any thing thither, then few Miles in the Country.

'Tis

'Tis observable, that the Statute for Inrollment giving Liberty to enter Deeds either of the four Courts at *Westminster*, or in the County where the Lands lye. The latter is seldom used.

And many Deeds containing Lands in several Counties, it would be inconvenient to enter them all.

But should it afterwards be found necessary to Extend this elsewhere, it will be better done from this as a Precedent, then to settle it altogether.

The Judges of the Kingdom were at first resident in the Kings Courts only, and from thence were made Itinerant as the Occasion of the Country called for them.

There can be no streams without a Fountain, but when that is finished, the Water may be directed to any place.

Nothing can be perfected without abnegating, and therefore to resolve to do nothing till we can do every thing, is an absolute Resolution to do nothing, and puts in the case of the impotent Man at the Pool of *Bethesda*, who (by Conclusion) was under an Impossibility of being healed. for he could not be healed till he stept in, and he could not step in because he was lame.

And having thus argued for Publication of
 es, as a Notice against Frauds: I hope En-
 cannot say, but I have fairly published my
 ights about it, and were all Propositions for
 ew Laws made as publick as this before they
 ed, parhaps it might save the labour of sub-
 uent Acts to repeal or explain them.

As to what I have said in the Law, I appeal
 them that know it, whether I have misrecited
 misinterpreted it.

And notwithstanding all that I have said of
 me of the Lawyers, I am so well sattisfied in
 Relation to that Science, that I would not
 change it, to be a higher Graduate in any o-
 rr. And it is more owing to the Candor of
 e Chiefs of the Law (who sit in the Seats of
 udgment) in discouraging all Fraudulent
 ractices, and to the Care and Fidelity of the
 racticers of the Law, than to the Law it self,
 at there are no more Frauds committed in the
 itles of Lands, under the present Incertainty
 them: For we see, if but One or Two in an
 ge of that Profession (and none of the most
 earned neither) do apply themselves to draw-
 Deeds and forging Evidences, what Work
 ey make in Westminster Hall.

And as my Lord Coke, speaking of the
 hird Court of Wards, said, That tho' the

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Parliament had rejected several Proposals for taking away those Tenures, yet he did not doubt but God had that Kindness for the People of *England*, that an Act would once pass for that purpose, by giving the Crown an Equivalent : *All which was fulfilled since his Death : So I have that foresight of the growing Mischiefs for want of a Registry, that I am confident the Necessity of it will force its own way : And therefore were I now dying I would send this out into the world to take its Fate, with this Motto only,*

Sine me, Liber, ibis in Orbem.

A
B I L L

FOR

Establishing a R E G I S T R Y

FOR

Titles of Lands.

W Hereas by the Common
Law of this Realm, Lands,
Tenements and Heredita-
ments were not to be trans-
ferred from one to another, but by Solemn Li-
veries and Seisin, or matter of Record.

And whereas by the Statute made in the
Eighth Year of the Reign of King Henry
Eighth, Intituled, an Act concern-

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ing

ing Uses and Wills, a Bargain and did become a Compleat Conveyance in Law, whereby Lands and Tenements might be transferred from one to another in a clandestine manner, without Livery and Seignior Matter of Record. For prevention whereof, by another Statute made in the 27th. Year of the late King Henry Eighth, For Inrollment of Bargains and Sales; It was Enacted that from and after the last Day of July, which should be since was in the Year of our Lord, Monarchs, Lands, Tenements, or other Hereditaments should pass, alter or change from one to another, whereby any Estate of Inheritance of Freehold, should be made or take effect in any Person or Persons, or any Use thereof be made, by reason only of any Bargain and Sale thereof, except the same Bargain and Sale were made by Writing, Indented, Signed and Inrolled in one of the Kings Courts Record at Westminster, or else within the same County or Counties, where the

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Mannors Lands or Tenements so bargained or sold, lye or be, before the Custos Rotulo- and two Justices of the Peace, and the Clerk of the Peace of the same County or Counties; or two of them at the least, whereof the Clerk of the Peace to be one, and the same Inrollment to be had or made, within six Months after the Date of the same Writings indented.

And whereas since the making the said Statutes, of late Years, there have been several inventions for Conveying of Estates of Inheritance of Freehold, by way of Lease and Release, and also for making of Bargains and Sales thereof for long Terms of Years without Inrollment of such Conveyances; both which are a manifest Abuse of the said Statute concerning Uses and Wills, and an Evasion of the said Statute for Inrollments.

And whereas the said Conveyances by Lease and Release, and Bargains and Sales for long Terms of Years, (being clandestine Conveyances to be Executed any where and invented contrary to the Intent and

Meaning of the said Statutes, and all the ancient and avowed Laws and Customs of this Realm are now of late Years become the most Usual and Common Conveyances, for Conveying of Freehold Lands, whereby several Frauds and Abuses have been committed, and several Suits and Contentions have risen thereupon, to the manifest hazarding the Titles of the Freehold Lands of this Kingdom, and the dishonour of the Laws thereof.

For remedy of the Mischiefs aforesaid, by providing one certain place, where all the Conveyances and Incumbrances herein after-mentioned, relating to Freehold Lands may be Entered, in order to the more easie and ready searching and finding out the same.

Be it Enacted by the Kings most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament Assembled, and by the Authority of the same

This

This Blank is for the Constitution and
Qualifications of the Register.

And be it Enacted, that the said Regi-
ster so to be appointed as aforesaid, on or be-
fore the day of
and all other succeeding Registers for ever
then after, shall provide and keep within one
of the Inns of Court, or some other place, in
or near the Citys of London or Westmin-
ster, an Office of Registry for the purposes

herein after-mentioned. And shall provide and keep in the said Office several Register-Books for Registering of Deeds and Writings in manner herein after-mentioned, the Counterfeiting of which said Stamps shall be and is hereby made ———

*And be it Enacted, that all Conveyances,
Grants or Assignments of any Mannors,
Lands, Tenements or Hireditaments of Inbe-
ritance of Freehold, within the Kingdom of
England, or of any Rents issuing out of the
same, or of any Leases or Terms for Lives
or Years to be made thereof, which at any
time after the day of*

shall be duly sealed and executed for good and lawful Consideration, and shall after such sealing and executing thereof, be registred in one of the said Register Books, shall in respect thereof have and be esteemed and taken to have the Priviledges and Preferences herein after-mentioned, that is to say that such Conveyances, Grants or Assignments

ments, from and after such Registering thereof, shall be good and effectual, according to the Purport and Contents thereof, against all other Conveyances, Grants or Assignments whatsoever, which after the said Day of shall be made of the same Mannors, Lands, Tenements or Hereditaments, and not Registered as aforesaid, notwithstanding that such Conveyances, Grants or Assignments so omitted to be Registered, shall be prior in Date or Execution to the said Conveyances, Grants or Assignments, which shall be so Registered.

Provided nevertheless that all such Conveyances, Grants or Assignments so omitted to be Registered as aforesaid, shall notwithstanding such omission be good and effectual against the Grantors, or the Persons making the same, and all other Persons whatsoever, except the Persons claiming under the said Conveyances, Grants or Assignments, which shall be so Registered as aforesaid, as fully and effectually to all Intents and Purposes, as if this Act had never been made.

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And

And for preventing a double charge in Enrolling of Bargains and Sales of Inheritance of Freehold, before the Entry thereof in the said Register-Books, Be it Enacted, That such an Entry made as aforesaid, of any Bargain and Sale of Inheritance of Freehold, at any time within six Months after the Date thereof, shall be deemed and taken to have, and is hereby made to have the force and effect of an Enrollment, within the said Statute for Enrollment of Bargains and Sales, as fully and effectually to all Intents and Purposes as if the same were inrolled in either of the said Courts of Record at Westminster, or with the Custos Rotulorum of the same County.

And whereas several Conveyances or Assignments may be made by endorsements upon former Deeds, Be it Enacted, that when any Conveyance, Grant or Assignment shall be duly Registred as aforesaid, and after such Registering thereof, there shall be any Grant, Conveyance or Assignment, Declaration of Trust

Trust or other Deed made by Endorsment thereon, that the Registering such Endorsment in one of the said Register-Books, and making a reference therein to the said former Deed on which the same was indorsed, shall be as good and effectual to all Intents and Purposes, as if the said former Deed were again Registered with the said Endorsement.

And whereas it may be Conceived to be sometimes prejudicial or inconvenient, to publish the Uses and Trusts to be declared of Lands, Be it Enacted, that where any Grants, Conveyances or Assignments shall be made of any such Mannors, Lands, Tenements, or Hereditaments as aforesaid, to any Uses, Intents or Purposes to be expressed in the same Deed, or any other Deed to which the same Deed shall refer, that the Registering of so much of such Conveyances, Grants or Assignments, by which the Legal Estate of the same Mannors, Lands, Tenements or

Hereditaments, contained in the said Deed shall stand transferred, and certifying such Registering upon the same Deed so in part registered, and also upon the other Deed to which the same so in part registered shall be made to refer, Shall be esteemed a Registering of the said Uses or Trusts within this Act, whereby to entitle the same Uses and Trusts to such preference as aforesaid, as fully and effectually to all intents and purposes, as if the same Uses or Trusts were registered at large, any thing herein contained to the Contrary notwithstanding.

And whereas Freehold Lands in England, are by several Acts of Parliament made liable to Executions on Judgments Recognizances and Statutes, which being entered in several places, the Searches for the same are chargeable, and the finding of them difficult, to the further bazzarding of the Titles of Lands: For remedy thereof Be it Enacted, that no Judgment, Recognizance or Statute, to be had or acknowledged at any

time

time after the said day of
shall bind or charge any Lands, Tenements or
Hereditaments within the Kingdom of Eng-
land, against any Purchasers or Mortgagees
thereof, except such Lands, Tenements or
Hereditaments, as the Defendants in such
Judgments, or the Cognizors in such Re-
cognizances and Statutes shall have on the day
of the Registering thereof with the said Regi-
ster in manner herein after-mentioned, That
to say, that for all Judgments, the Names
of the Plaintiffs and Defendants therein,
the Summs recovered thereby, and the
Day of the Signing thereof by the Judge, or
other Officer signing the same, Shall be Re-
gistered; and for all Recognizances and Sta-
tutes, the Names of the Cognizors and
for Cognizees therein, the Summs thereby ac-
knowledged to be due, and the day of the Ac-
knowledgment thereof Shall be Registered.
And be it Enacted, that no Devise by Will
of any Lands or Tenements within the
Kingdom of England, shall be allowed as
good

good against any Purchasers or Mortgagees of the same Lands or Tenements, unless such Will or so much thereof, whereby such Devise shall appear, shall be registred in one of the said Register-Books, within six Months next after the death of the Testator, provided that after such Registering of such Will or Devise the same shall take the Effect from the Death of the Testator.

And be it Enacted, That the said Register for the time being, or his sufficient Deputy for that behalf, shall from time to time, certify the days of all and every the respective Registries therein before Directed, upon some part of the Deeds or Writings so to be Registred as aforesaid, by affixing the Stamp of the said Office thereunto, and signing the same. Which said Certificate shall be taken as Evidence in such Registries in all Courts of Record and elsewhere.

I cannot be so Arrogant, to dictate
his Bill to the Legislative Power, but
what I have asserted be true, I hope
the more Learned Gentlemen of the
Law, who shall oppose this Remedy,
will either provide a better, or agree to
his Motto (for proclaiming the Laws of
England) upon every House in the
Kingdom, NO ONE KNOWS THE
OWNER : In which they will not
be more ingenuous to their Profession,
than the *Athenians* were to their Religi-
on by that Inscription on the Altar,
TO THE UNKNOWN GOD.)

F I N I S.

cannot be so Avenged, to declare
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 as I have already said, I hope
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 (THE UNKNOWN GOD)

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